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5 **In Pro Per**

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

**FILED**  
AUG 22 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

8 Richard A. Ferreira,  
9 Plaintiff,

10 vs.

11 CHABOT COLLEGE; CHABOT-LOS  
12 POSITAS COMMUNITY COLLEGE  
13 DISTRICT; KATHERYN LINZMEYER,  
14 MELINDA MATSUDA, DR. ROBERT  
CARLSON; LORENZO LEGASPI, ANITA  
MORRIS AND DOES 1-25,  
Defendant

2064  
No.: CV08-2254-CW

**PLANTIFF'S CASE MANAGEMENT  
CONFERENCE STATEMENT**

15 Plaintiff submits the following Case Management Statement pursuant to Northern  
16 District of California Local Rule 16-9 as mandated by the Court's August 12, 2008 Order  
17 Settling Initial Case Management Conference and to confer in accordance with the ADR  
18 Process.

19 1. JURISDICTION AND SERVICE

20 In accordance to the Defendant's motion this Court has jurisdiction of this action  
21 under federal question due to the Plaintiff's Complaint alleges three independent and  
22 separate claims arising solely under federal law in the Sixth Cause of Action, the  
23 Seventh Cause of Action, and the Eighth Cause of Action. Alleged violations of 42  
24 U.S.C. §1983, 42 U.S.C. §1985(3) the first fourth, fifth, ninth, thirteenth and fourteenth  
25 amendments to the U.S. Constitution, and Title IX, Education Amendments of 1972, 20  
26 U.S.C. §§1681, et seq.  
27  
28

1           2.     FACTS

2           Plaintiff worked at Chabot College ("Chabot") in a temporary position from  
3 approximately 1990 through 1992, at which he was hired in various (5) on-call  
4 temporary positions. Plaintiff's employment status ended on good terms. After some  
5 time, the Plaintiff returned to work for Chabot in two temporary positions from April,  
6 1999 through July, 2000 in which he received an excellent performance review. In July,  
7 2000 Plaintiff was hired by Chabot as a Student Services Specialist II, to work in the  
8 Financial Aid Office. Prior to the Director of Financial Aid's departure the supervisor  
9 was please with the Plaintiff's performance and provided the Plaintiff with a good  
10 performance review in closing stating that with additional training the Plaintiff would  
11 performance at an "Excellent" level.

12           Prior to this time the Plaintiff performed well above expectations and did not  
13 disclosing his mental disability or sexual orientation to any of his peers and got along  
14 very well. However, a fellow co-worker Mr. James Sullivan became aware of the  
15 Plaintiff's sexual orientation through a mutual personal acquaintance who had disclosed  
16 to the Plaintiff also that he knew Mr. Sullivan. Plaintiff was not in any way interested in  
17 any personal or sexual involvement with Mr. Sullivan, however, experienced from the  
18 beginning of his employment in the Financial Aid office invitations to drinks, open  
19 requests to meet after work hours, lewd comments, and sexual innuendos. Plaintiff  
20 declined all requests from Mr. Sullivan. Plaintiff inadvertently, while making  
21 arrangements with others friends encountered Mr. Sullivan in a local bar/tavern and  
22 found him allegedly intoxicated. Mr. Sullivan approach the Plaintiff and allegedly  
23 attempted to sexually provoked Plaintiff in a physical manner to which Mr. Sullivan had  
24 to be forced to remove his hands and Plaintiff clearly rejected said sexual advances.

25           Plaintiff's immediate supervisor was not available because the Director of  
26 Fiancial Aid position was vacant, therefore, the office reported directly to the Vice-  
27 President of Student Services, Defendant, Melinda Matsuda. Plaintiff was unaware, at  
28 that time, that Defendant, Melinda Matsuda was involved in a concealed sexually  
relationship with Mr. Sullivan. Plaintiff requested a meeting with Defendant, Melinda

1 Matsuda, through his office and of said alleged violations and so doing so, to inform the  
2 Defendant, Melinda Matsuda, but before he could discuss his concerns he was  
3 immediately retaliated with a negative performance memorandum by Defendant,  
4 Melinda Matsuda. Plaintiff was adversely affected by said action and informed  
5 Defendant, Melinda Matsuda of alleged acts of Mr. Sullivan. Said Defendant destroyed  
6 the negative performance memorandum and, in part if not in whole, placed into motion  
7 the plan of action that would terminate the Plaintiff on the basis of poor performance  
8 and that the sexual harassment investigation would be completed by Defendant,  
9 Melinda Matsuda.

10 Plaintiff continued to follow the instructions and direction of his superiors to the  
11 best of his abilities which included changing responsibilities of who would complete the  
12 investigation unaware of the initial motive of the Defendant, Melinda Matsuda and his  
13 superiors. Plaintiff only requested remedy at that time was for the harassment to stop  
14 on several occasions and for Defendant's to take action to prevent further hostilities  
15 from Mr. Sullivan in his office and any other discrimination. Plaintiff repetitively  
16 requested action to be taken by Defendants, Melinda Matsuda and it fell on deaf ears  
17 with no action was taken until an email was sent to Defendants, Human Resources  
18 Director, Sharon Trethan. Whereupon, Plaintiff was transferred to another office to  
19 temporarily to resolve any concerns by Defendant, Melinda Matsuda.

20 Defendants, Melinda Matsuda at first stated that she was looking to make the  
21 transfer permanent and that after the hiring a Director of Financial Aid and that  
22 individual who would complete the sexual harassment complaint investigation filed by  
23 the Plaintiff email request to have someone else conduct it due to the bias statements  
24 the Defendant, Melinda Matsuda made. Instead, Plaintiff was ordered to return working  
25 in the Financial Aid office and said that he would have to learn to work together with Mr.  
26 Sullivan.

27 Plaintiff underwent denied reasonable accommodation requests and later  
28 believed he was being discriminated against because he was also force to disclose his

1 sexual orientation to Defendant, Melinda Matsuda under the guise a necessity to  
2 conduct an investigation of alleged sexual harassment to address the matter.

3 Plaintiff was transferred back to the Financial Aid office was informed by  
4 Defendant Melinda Matsuda to the Plaintiff that there was no grounds for his sexual  
5 harassment complaint and that the Plaintiff would return to the Financial Aid office and  
6 would be forced to continue working in the same office as Mr. Sullivan. Plaintiff strongly  
7 objected, however, reluctantly returned to the Financial Aid office after voicing that he  
8 would take this matter outside Chabot College to have resolved. Shortly afterwards,  
9 without admitting any wrongdoing, Mr. James Sullivan was transferred out of the  
10 Financial Aid office to the Admissions and Records office.

11 Plaintiff experience continuing hostility and reported it to said Defendants  
12 regarding Mr. James Sullivan continuing efforts to create a hostile work environment  
13 unaware of the Defendant's relationships and requested Defendants to take more  
14 appropriate steps to stop any further discrimination or harassment. Defendants took no  
15 further action on the matter regarding Mr. Sullivan to the Plaintiffs knowledge and  
16 placed into effect instead a plan of action to terminated Plaintiff after any statue of  
17 limitation for filing complaints with the Department of Fair Employment was exhausted.

18 Plaintiff was denied reasonable accommodation requests for his mental disability  
19 affected by his harassment and discrimination, including but not limited to transferring to  
20 other positions to move away from the individual(s) creating the hostile environment to  
21 Plaintiffs knowledge at that time and became victim to intrusive mental fitness for duty  
22 examination demand by the Defendants. Plaintiff was unaware that Defendants  
23 Melinda Matsuda, the Financial Aid Director, Katheryn Linzmeyer, the College  
24 President, Dr. Robert Carlson were in part acting, independently, if not as a whole,  
25 partaking in creating the hostile work environment and retaliation and discrimination.

26 Plaintiff informed the Defendants of said continued acts in written form to be the  
27 recipient of harassment, retaliation, discrimination and such barriers which created a  
28 hostile work environment as the actions of said Complaint for Damages during  
employment, and that of the acts of each agent, servant and employee ratified by each

1 of the remaining Defendants who was hired, and knew, or should have known, that  
2 hiring each other Defendant created a foreseeable risk of injury, and that with said  
3 knowledge, each Defendant, if not intentionally, did negligently and carelessly hire  
4 and/or failed to closely supervise each other Defendant in the course and scope of their  
5 agency and employment. Each and every act, and omission to act, as alleged in this  
6 paragraph caused injury to Plaintiff, as further alleged herein.

7 Each and every wrongful, injurious, negligent, willful, discriminatory, harassing  
8 act, and failure to act, by the Defendants, were not a normal incident of employment or  
9 the basis on negative employment performance and were outside the scope of the  
10 employment bargain.

11 Plaintiff was issued two annual negative performance evaluations but did not  
12 receive them in a timely manner, both annual 2004 and 2005 evaluation were received  
13 in 2005. Plaintiff work diligently to maintain his position at Chabot College until finally  
14 becoming aware of the email sent by Defendants, Anita Morris, (the new) Human  
15 Resources Director, on September 16, 2005 in which correspondence between Plaintiff  
16 and Defendants Katheryn Linzmeyer was being copied forwarded to Defendants, Anita  
17 Morris and copied to Laura Schulkin of Leibert, Casssidy and Whitmore, a law firm.  
18 Immediately on September, 20, 2005, Defendants placed the Plaintiff on paid  
19 administrative leave pending an alleged investigation to which the intent to terminate  
20 papers were served. Defendants informed Plaintiff that his termination was based on  
21 alleged gross negligence and integrity. Subsequent, the Skelly Hearing was scheduled  
22 when Defendants attempted to have the Plaintiff terminated, however, prior to the  
23 termination date.

24 Up until this point, and after March, 2006, Plaintiff remained unaware of  
25 Defendants, Melinda Matsuda and Mr. James Sullivan involvement, but became aware  
26 of the possibility. Upon said discovery after Plaintiff was on paid leave on or around  
27 July, 2006 Plaintiff became aware of factual information that would support the  
28 discovery of the relationship between Defendants, Melinda Matsuda and Mr. James  
Sullivan and an additional, if not the, possible motive behind Chabot's initial

1 discriminatory and retaliation acts. Although the motive for Defendants, Melinda  
2 Matsuda action is based on her personal involvement, the fact remains that she, as well  
3 as, all Defendants acted in part and/or as a whole to discriminate against the Plaintiff by  
4 creating a hostile work environment and retaliation based on the Plaintiffs sexual  
5 orientation and disability and protective acts.

6 Factual Disputes:

7 Whether Defendants acted in accordance, and did not, discrimination.

8 Whether Defendants acted in accordance, and did not harass the Plaintiff.

9 Whether Defendants, in part or as a whole, created a hostile work environment.

10 Whether Defendants, in part or as a whole, in retaliation for Plaintiff filing  
11 protected acts.

12 Whether Defendants failed to provide reasonable accommodation.

13 Whether Defendants acted in accordance when denying Plaintiff's request(s) for  
14 transfer(s).

15 Whether Defendants prevented Plaintiff from presenting appropriate evidence at  
16 any time.

17 Whether Defendants denied Plaintiff's request(s) for transfer(s).

18 Whether Defendants acted in accordance in terminating the Plaintiff.

19 Whether Defendants did not discriminate in terminating the Plaintiff.

20 3. LEGAL ISSUES

21 Plaintiff maintains that all allegations of the Complaint for Damages are factual.  
22 Plaintiff maintains that Defendants discriminated, retaliated, violated the California or  
23 U.S. Constitutions or Amendments thereto in their treatment, Defendants violated  
24 Plaintiff's civil rights, Plaintiff was damaged by the conduct of the Defendants. Plaintiff  
25 maintains that he exhausted his administrative and/or judicial remedies and found no  
26 other recourse than to file a lawsuit. Plaintiff maintains that he was terminated for  
27 illegitimate and/or discriminatory reasons and denies the Defendants alleged poor job  
28 performance and conduct. Furthermore, Plaintiff maintains that conduct of the  
Defendants was severe and pervasive, discrimination, harassment and/or retaliation



1 constituted a continuing violation, Defendants failed to provide all procedural and/or  
2 substantive due process during employment and rights during the Skelly hearing and  
3 any appeals.

4  
5 **4. MOTIONS**

6 There are no motions currently pending at this time.

7 **5. AMENDMENT OF PLEADINGS**

8 Plaintiff does not anticipate amending his pleading at this time but would like  
9 to retain the right upon discovery of any relative information that was not accessible  
10 previously if possible.

11 **6. EVIDENCE PRESERVATION**

12 Plaintiff has taken all reasonable steps to comply with the FRCP 26 and is taking  
13 steps to notify any and all names and identified as potential witnesses.

14 **7. DISCLOSURES**

15 Plaintiff will act in accordance to the Case Management Conference mandated  
16 Court August 12, 2008 Order and ADR Process to disclose any and all including (1) a  
17 list of witnesses currently know to Plaintiff that he believes will have discoverable  
18 information to support his claim and (2) a description by category of those documents  
19 Plaintiff has in his possession, or control and may use to support his claim.

20 **8. DISCOVERY**

21 Plaintiff was not able to meet and confer with the Defendant, however, will set  
22 forth a plan in accordance to the Case Management Conference Court August 12, 2008  
23 Order and ADR Process. At this time, changes in initial disclosure requirements are not  
24 anticipated, however, there are subjects on which Discovery may be needed. Included  
25 but not limited to:

26 Documents maintained in the Financial Director's office.

27 Any and all documents in reference to Plaintiff including the Personnel File.

28 Any and all correspondence between Defendants on paper and electronic email.

Financial Aid previously requested documents for the Skelly Meeting.

1 Financial Aid Audit Responses.

2 Copy of the sexual harassment report submitted to the state (if any).

3 **CLASS ACTION**

4 This claim is not a class action.

5 **9. RELATED CASES**

6 There are no related pending or otherwise cases before this Court to the  
7 Plaintiff's knowledge.

8 **10. RELIEF**

9 Plaintiff proposes said illegal employment practices, as set forth herein and  
10 as subject to proof, have caused and will continue to cause the Plaintiff to suffer  
11 damages, injuries and losses, including but not limited to, loss of earnings, cost of legal  
12 actions and attorneys fees, mental and emotional pain, humiliation, mental anguish, loss  
13 of enjoyment of life and emotional distress and therefore should not be limited actual  
14 wage loss or subject to reduction for plaintiff's failure to mitigate.

15 **11. SETTLEMENT AND ADR**

16 Plaintiff anticipates a need to conduct discovery, including without limitation  
17 the deposition of Defendants and key witnesses and will act in accordance with the  
18 Case Management Conference on August 12, 2008 Order.

19 **12. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

20 Plaintiff consents to and appreciated the Case Management Conference on  
21 August 12, 2008 Order to have a magistrate judge conduct further proceedings.

22 **13. OTHER REFERENCES**

23 Plaintiff does not have anything to include at this time.

24 **14. NARROWING OF ISSUES**

25 Plaintiff does not believe that it can narrow by agreement or motion based to  
26 expedite the presentation of evidence.

27 **15. EXPEDITED SCHEDULE**

28 Plaintiff does not believe that this case can be expedited.

**16. SCHEDULEING**



1 Plaintiff will act in accordance with the Case Management Conference on  
2 August 12, 2008 Order in regards to the schedule Trail and Pre-Trail.

3 17. TRIAL

4 Plaintiff requests a jury trial and will act in accordance with the Case  
5 Management Conference on August 12, 2008 Order in regards to the schedule Trail  
6 and Pre-Trail.

7 18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

8 Plaintiff does not know and party or entities to have either a financial interest in the  
9 subject matter in controversy or in a party to the proceeding or any other kind of interest  
10 that could be substantially affected by the outcome of the proceeding.

11 19. OTHER MATTERS

12 Plaintiff does not know any matters that may facilitate the just, speedy and  
13 inexpensive disposition of this case.

14  
15 Dated this August 16, 2008

  
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